JUDGEMENT

The Municipal Court in Prague issued the following judgement on 24 October 2005 in the matter of the Plaintiff: Kaufland Česká republika, v.o.s., against the Defendants: 1) ha-vel internet s.r.o. and 2) CZ.NIC, z. s. p. o. regarding abstention from the usage of the domain kaufland.cz and transfer of the registration of the domain kaufland.cz:

1. The first Defendant is obliged, within three days after this judgement becomes effective, to abstain from using the domain "kaufland.cz".
2. Both Defendants are obliged, within 30 days after this judgement becomes effective, to correct the detrimental situation by transferring the registration of the domain "kaufland.cz" to the Plaintiff.
3. Both Defendants are obliged to pay the Plaintiff the related legal charges of 7,425 CZK to the hands of the Plaintiff's representative within three days after this judgement becomes effective.

By legal action the Plaintiff sought issuance of a decision based on which the court would impose an obligation on the first Defendant to, within three days after the judgement becomes effective, abstain from using the domain "kaufland.cz", and an obligation on both Defendants to, within thirty days after the judgement becomes effective, correct the detrimental situation by transferring the registration of the domain "kaufland.cz" to the Plaintiff. The Plaintiff substantiates its legal action by the fact it is the subsidiary of a generally known company, Kaufland Stiftung & Co. KG. The Kaufland corporation owns a combined Kaufland trademark, which was proved by an extract from the database of trademarks at OHIM in Alicante. The Kaufland corporation promotes its products and services through Internet on its www.kaufland. (ending of the respective country) website. The Kaufland corporation operates in the Czech Republic through the operations of the Plaintiff.

The first Defendant is, according to the Plaintiff, a domain speculator and on 1 February 1998 the Defendant registered the domain www.kaufland.cz. The Plaintiff was forced to find a different solution by registering the domain www.kaufland-online.cz. However, the first Defendant actually does not use the domain and thus this speculative blocking is qualified as unfair competition breaching the general clause and breaching the Plaintiff's rights related to the trademark. A similar judgement was already issued by the Regional Court in Brno, ref. No. 11Cm 8/2003-45 dated 7 May 2003.

The second Defendant is an interest association of legal entities and it is the only entity in the Czech Republic registering cz domains. The second Defendant does not investigate, upon registration, whether the registered domains breach the law or not. Thus this practice enables speculators to register other domains.

For its defence, the first Defendant stated that the Municipal Court in Prague is not competent in terms of its local jurisdiction. Furthermore, the Defendant stated that the Plaintiff is not actively identified as the owner of the trademark, that is being referred to, as the German company, Kaufland Warendhandel GmbH & Co KG. Therefore, the Plaintiff is not entitled to the rights and protection pursuant to Section 8 (4) of the Act No. 441/2003 Coll. Even if the Plaintiff was the true owner of the trademark, the Defendant feels that the domain is not used in business and therefore there is no legal reason why such domain cannot be registered by an entity other than the Plaintiff. The Defendant also does not agree with the opinion that its acts represent unfair competition in conflict with the general clause or other specific facts of unfair competition. Likewise, Section 44 (1) of the Commercial Code primarily assumes that such conduct shall be carried out as economic competition, in conflict with good manner of competition and capable of being detrimental to competitors or consumers. As the Plaintiff and the Defendant run their businesses in different areas and not in the same relevant market, there is no competitive relationship between them as there is no economic competition.

For its defence, the second Defendant stated that while registering the domain it is not its competency to assess the conflict with copyright, trademark or other rights or whether the registered domains otherwise breach third party rights, e.g. on the grounds of company protection, unfair competition, etc. The right for the domain registration is not enforceable by law or a contract. The Defendant considers the legal action vague and objects that it has no responsibility for breaching the rights of the Plaintiff.

The court inspected evidence in the form of documents, i.e. extract from the trademark database at the Industrial Property Office, printed version of website at www.kaufland.de, www.kauflan.pl, www.kaufland.cz, http://web2.ha-vel.cz, rules of registration of domains with the cz domain, letter dated 10 October 2003 and extracts from the Business Register of the parties. The court did not inspect the evidence delivered after providing evidence by the first Defendant, in particular the audio recording and project of the first Defendant because after the end of providing evidence, the evidence may not be provided. This evidence was refused by the court already during oral proceedings as unnecessary, likewise, the proposal by the Plaintiff to receive evidence based on empirical research and comparative extracts from the Business Register as the court did not consider this evidence as relevant in relation to the outcome of this dispute.

Based on such evidence the court reached the following factual conclusions and legal conclusions: The court does not identify itself with the opinion that the Plaintiff is not objectively actively identified. The Plaintiff is a subsidiary of Kaufland Stiftung & Co. KG. It operates in the Czech market and is well-known by Czech consumers so that the identification kaufland may be considered as indicative regardless of ownership of registered trademarks. The first Defendant, by registering the domain "kaufland.cz" with the second Defendant, acted in conflict with the provision of Section 44 of the Commercial Code and the acts of the first Defendant fulfil the facts of the provision of Section 47 (a) of the Commercial Code. The court sees as common knowledge (Section 121 of Civil Court Rules) and it also results from the evidence submitted that the first Defendant has been for some time active in massive registration of domains followed by selling these domains without actually attaching any website to the registered domains, or having only a formal website. The court further deduces that although the parties operate in different areas they may be considered as competitors in general. The first Defendant also breached the Plaintiff's right resulting from Section 41 of the Commercial Code, its right to freely develop its competitive activities. The court also did not agree with the opinion of the second Defendant objecting that it is not its competency to assess the conflict with copyright, trademark or other rights or whether the registered domains otherwise breach any other third party rights, e.g. on the grounds of company protection, unfair competition, etc. and that the second Defendant is not responsible for breaching the Plaintiff's rights. Regarding the fact the second Defendant is the national administrator or the highest level of .cz domain and all registrations and their cancellation may be done only through this administrator, the court supposes it is justified to require the second Defendant to assess the obvious conflicts with trademark or other rights of other entities, especially in such obvious cases as the existing one. According to the court's opinion, the second Defendant may not waive its responsibility in this way and thus enable the speculators their illegal conduct in a massive scale. For all the reasons above, the court ruled as stipulated in statements I and II.

The statement regarding the legal charges is substantiated by the provision of Section 142 (1) of the Civil Court Rules, the court awarded the successful Plaintiff with compensation of legal charges in the total amount of 7,425 CZK representing a lump fee for the attorney calculated pursuant to the Public Notice No. 484/2000 Coll., in the amount of 6,200 CZK and three indirect lump sums of 75 CZK, plus a paid court fee of 1,000 CZK.

When studying the judgement, it is necessary to keep in mind that the judgement contains the court's

statement, its rationale and also the summary of statements of the involved parties whereas the court did not have to mention certain statements at all (e.g. when issuing the preliminary action) and therefore these statements only represent a legal opinion of the respective party and not the court's conclusion.

Likewise, the court's decision may not automatically be applied to other cases (despite their similarity) and the CZ.NIC association recommends to consult each particular case with experts in domains and lawyers.